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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,766	07/02/2003	Gary Wayne Yewdall	DAV1170.001AUS	5915

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Knobbe Martens Olson & Bear LLP  
2040 Main Street  
Fourteenth Floor  
Irvine, CA 92614

EXAMINER
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BUI, LUAN KIM

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/612,766	<b>Applicant(s)</b> YEWDALL ET AL.	
	<b>Examiner</b> Luan K. Bui	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) 46-63 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-21 is/are allowed.
- 6) ☒ Claim(s) 22-29 and 33-40 is/are rejected.
- 7) ☒ Claim(s) 30-32 and 41-45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/3/03 &amp; 2/17/04</u> . | 6) <input type="checkbox"/> Other: _____                                                |

1. Claims 46-63 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/10/2005.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 23-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 23, the phrase “at lest” [sic] is incomplete and indefinite.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Hirsch et al. (3,997,677; hereinafter Hirsch'677. Hirsch'677 discloses a container (10) comprising a body (12) for housing a product and a lid (14) for closing the container to provide an hermetically sealed enclosure for the product therein. The container may include a weakened seal area/facility which acts as a pressure relief valve (see abstract) for releasing pressure within the container. The facility of the container of Hirsch'677 is inherently capable for providing internal pressure relief

Art Unit: 3728

over a range of temperatures encompassing freezing to sterilizing to permit maintenance of the hermetic seal throughout the freezing to sterilizing temperatures to which the container will be exposed.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 22-25, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poslinski et al. (6,364,152; hereinafter Poslinski'152) in view of Swett et al. (3,679,088; hereinafter Swett'088). Poslinski'152 discloses a container (10) comprising a body (12) for housing a product and a lid (14) for closing the container by vacuum which is considered equivalent to a hermetically sealed enclosure as claimed. Poslinski'152 further discloses the lid includes features for use in freezing temperatures and heating temperatures such as one-way valve to permit air to escape from an interior of the container (see abstract, background, summary and column 3, lines 48-60) which is considered as a facility for providing internal pressure relief over a range of temperatures encompassing freezing to sterilizing to permit maintenance of the hermetic seal throughout the freezing to sterilizing temperatures to which the container will be exposed. To the extent that Poslinski'152 fails to show the container comprises a hermetically sealed enclosure, Swett'088 show a lid (10) adapted to closed an opening in a

Art Unit: 3728

body to provide a hermetically sealed enclosure (abstract). It would have been obvious to one having ordinary skill in the art in view of Swett'088 to modify the container of Poslinski'152 so the container comprises a hermetically sealed enclosure for better protecting the contents within the container.

As to claims 23-24, Poslinski'152 discloses in the embodiment of Figures 7, the lid includes a deformable wall portion (50) comprises a bellows flexible wall structure which is considered equivalent to the pressure relief facility as claimed.

As to claim 25, the container of Poslinski'152 is capable of withstanding more extreme temperature environments such as during reheating or cooking (column 3, lines 46-49), during such environments the temperature may include 150 degree Celsius (during cooking).

As to claims 39 and 40, Poslinski'152 fails to disclose the container being of approximately rectangular shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Poslinski'152 to construct the container of approximately rectangular shape because the selection of the specific shape for the container such as rectangular as claimed or circular of Poslinski'152 would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well and inasmuch as applicant's specification does not state that using these specific shapes as claimed solves any particular problem or yields any unexpected results and since a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47. Poslinski'152 discloses a set of co-

Art Unit: 3728

operating first and second lugs (22, 54-58) and the two lugs are side by side (along vertical line across an opening 52).

8. Claims 26-29 and 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 22 above, and further in view of Hustad et al. (5,293,997; hereinafter Hustad'997). Poslinski'152 further the seal between co-operating parts of the body and lid is formed by an elastomeric layer (32) therebetween. However, Poslinski'152 further fails to show the body and lid being formed from robust semi-rigid polymer. Hustad'997 shows a container (12-14) formed from semi-rigid polymer (column 1, lines 31-35) for container food. It would have been obvious to one having ordinary skill in the art in view of Hustad'997 to modify the body and lid of Poslinski'152 as modified so the body and lid formed from semi-rigid polymer for better protecting the contents. The semi-rigid body and lid of Poslinski'152 as modified is considered equivalent to robust semi-rigid polymer of pharmaceutical grade since food container is capable of containing pharmaceutical.

As to claims 27-29, see Figures 2 and 3 of Poslinski'152. Poslinski'152 discloses the elastomeric layer (32) applied to a peripheral rim (34, 36) of the lid to sealingly co-operate with a peripheral sealing rim of the body (top surface of the sealing flange 22) and a first, static, seal (Figure 2) and a second, dynamic, seal (Figure 3).

As to claim 33, the container of Poslinski'152 is capable for containing a product as recites in claim 33.

Art Unit: 3728

As to claim 34, the container includes means (58) for releasably locking the lid in a first position with its sealing rim (38) raised from the sealing rim of the container body (above top surface of the sealing flange 22) to enable withdrawal of moisture between spacers (60) (Figure 2 and column 6, lines 1-6).

As to claims 35-38, Poslinski'152 discloses the first position (Figure 2) and the second position (Figure 3) and the container of Poslinski'152 is capable of performing the intended uses as recited in claims 35-38.

*Allowable Subject Matter*

9. Claims 1-21 are allowed.

10. Claims 30-32 and 41-45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb  
December 29, 2005



Luan K. Bui  
Primary Examiner  
Art Unit 3728